

Remarks/Arguments

Election

Group I (containing Claims 1-6) is provisionally elected with traverse. Assignee reserves the right to petition for review of the Restriction Requirement, for reasons given below.

Errors in Restriction Requirement

The assignee respectfully asserts that the restriction requirement is improper because a prima facie case for restriction has not been established. As stated in MPEP 808: "Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct; and (B) the reasons for insisting upon restriction"

As stated in MPEP 808.02,

"the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:

(A) Separate classification thereof: This shows that each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search....

(B) A separate status in the art when they are classifiable together: Even though they are classified together, each subject can be shown to have formed a separate subject for inventive effort when an

explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) A different field of search: Where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims."

In this case, neither separate classification, nor separate status in the art, nor different field of search have been shown for the various groups of claims identified in the Restriction Requirement. Although on Page 2 of the Restriction Requirement, class 244 is mentioned regarding groups III and IV, this is a typographical error. Class 244 concerns aeronautics. Class 705, subclass 26 concerns electronic shopping (e.g., remote ordering), and is mentioned on Page 2 of the Restriction Requirement regarding groups I and II. Apparently this classification would apply as well to groups III and IV.

In the Restriction Requirement, no patents are cited as evidence of separate status, or separate field of search . No explanation or example is given as to how it could be necessary to search for one of the subjects in places where no art pertinent to the other subject exists. On the contrary, in this case, one would expect to search for

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one of the subjects (e.g. a method for selling and arranging shipment of goods) in places where art pertinent another subject (e.g. a method for arranging shipment of goods purchased from a seller) exists.

As stated in MPEP 808.02, where “the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions.”

In this case, the classification and the field of search are the same for the various groups of claims identified in the Restriction Requirement, and there is no indication of separate future classification or field of search. Thus, the Assignee respectfully submits that in this case, no reasons exist for dividing among the various groups of claims. Therefore, the Restriction Requirement should be reconsidered and withdrawn.

Assignee respectfully requests that the Restriction Requirement be withdrawn upon reconsideration, and requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



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